

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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| In the Matter of |) | |
| |) | |
| Comprehensive Review of Universal Service Fund |) | WC Docket No. 05-195 |
| Management, Administration, and Oversight |) | |
| |) | |
| Federal-State Joint Board on |) | CC Docket No. 96-45 |
| Universal Service |) | |
| |) | |
| Schools and Libraries Universal Service Support |) | CC Docket No. 02-6 |
| Mechanism |) | |
| |) | |
| Rural Health Care Support Mechanism |) | WC Docket No. 02-60 |
| |) | |
| Lifeline and Link-Up |) | WC Docket No. 03-109 |
| |) | |
| Changes to the Board of Directors for the National |) | CC Docket No. 97-21 |
| Exchange Carrier Association, Inc. |) | |

REPLY COMMENTS OF VERIZON

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REPLY COMMENTS OF VERIZON

The Commission should take the opportunity to refocus on the core goals of the universal service fund, and require that program funds be spent only on measures that are closely targeted to meeting these core goals, so that it can better control the size of the fund, and eliminate unnecessary bureaucratic burdens. It also should direct USAC and the Bureau not to enforce provisions added to the instructions of the Form 499 contributor revenue reporting worksheet, which purport to impose obligations on wholesalers to police their resellers and pay universal service fees on their behalf if they do not have evidence that the resellers are contributing to the universal service fund. The Commission should direct USAC and the Bureau to require that resellers pay into the universal service fund directly for these contributions, rather than imposing additional and unfair burdens on wholesalers.

The Commission also should adopt suggestions that would allow the program to operate more efficiently and eliminate unnecessary burdens and delays. For example, it should require USAC to calculate the quarterly contribution factor in a more timely manner, so that contributors will have time to adjust tariffs and billing statements before the start of the new quarter. It should require USAC to give program participants a warning and an opportunity to respond and correct situations of apparent unpaid debt before USAC initiates “red light” delinquency status. It should direct USAC to work with the industry at improving its processes, and making its actions and decisions more transparent. It also should adopt measures to streamline the E-Rate program, and set firm deadlines for USAC to review applications, invoices, and appeals, in order to minimize delays in getting funding to applicants and service providers.

I. ANY PERFORMANCE MEASURES SHOULD FOCUS ON CORE STATUTORY GOALS AND CONTROLLING GROWTH OF THE FUND

Several commenters have suggested that the Commission adopt “meaningful performance measures” in order to ensure that the universal service program is managed effectively.¹ Regardless of the performance measures selected, the Commission should ensure that universal service funds are more efficiently targeted to achieving core universal service goals, while reducing the burden on consumers.² In particular:

¹ See *Comprehensive Review of Universal Service Fund Management, Administration and Oversight*, 20 FCC Rcd 11308, ¶ 24 (2005) (“NPRM”).

² One recent report states that, federal universal service fund “spending has increased from \$15 per household in 1993 to \$52 per household in 2003.” See The Progress & Freedom Foundation, *Digital Age Communications Act, Preliminary Proposal of the Universal Service Working Group*, at 9-10 & n.32 (Oct. 2005) available at www.pff.org/issues-pubs/books/051024DACAUSF1.pdf (“Progress & Freedom Foundation Report”) (citing Stephan B. Pociask, *Universal Telephone Service: Are We There Yet?* at 2 (Sept. 22, 2004)).

High cost. In connection with its rulemaking proceedings regarding both the rural and non-rural mechanisms for high cost loop support,³ the Commission should refocus high cost funding to eliminate inefficient subsidies to multiple networks in the same area. Thus, the Commission should reject suggestions such as those to “assess the system’s progress in ensuring and facilitating the designation of qualified” eligible telecommunications carriers (“ETCs”) and “set a goal that consumers in rural and high cost areas should have access to service from no fewer than 3 total ETCs,” Dobson Cellular Comments, at 12-13. This suggestion has the goals of the universal service program exactly backwards.⁴ Funding multiple ETCs in high cost areas in the name of “competition” does not further the goals of the universal service program, which is to support necessary infrastructure to provide customers in high cost areas with access to basic, affordable telecommunications services.⁵ Moreover, it is naïve to suggest that, simply because more than one ETC in a study area is receiving high cost support, competition exists “because of” the universal service subsidy. The truth is that in many, if not most, areas where multiple carriers receive universal service support, “competition” from a number of intermodal providers

³ See *Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission’s Rules Relating to High-Cost Universal Service Support*, 19 FCC Rcd 16083 (2004); *Federal-State Joint Board on Universal Service Support, High-Cost Universal Service Support*, Notice of Proposed Rulemaking, WC Docket No. 05-337, FCC 05-205 (rel. Dec. 9, 2005).

⁴ See Verizon Comments, CC Docket No. 96-45, at 3-7 (filed Sept. 30, 2005).

⁵ See *Federal-State Joint Board on Universal Service*, Recommended Decision, 19 FCC Rcd 10812, ¶¶ 62, 65 n.180 (2004); *Multi-Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Separate Statement of Commissioner Kevin J. Martin, 16 FCC Rcd 19613 (2001) (noting that using universal service funds to artificially “create” competition by funding multiple ETCs in high cost areas, “may make it difficult for any one carrier to achieve the economies of scale necessary to serve all of the customers in a rural area, leading to inefficient and/or stranded investment and a ballooning universal service fund”).

exists without the need for universal service subsidies.⁶ The universal service fund simply cannot sustain its continued pace of growth, which lately has been fueled in large part by an increase in the number of ETCs.⁷

Schools & libraries: Although commenters do not all have the same idea of how to measure program success, they all agree that there is a pressing need to require USAC to improve the administration of the program, and eliminate unnecessary delays in E-Rate funding. The Commission also should make sure that in administering the program, USAC does not punish technical or minor rule violations with a requirement to repay funds that were disbursed to applicants for eligible services. *See* Section VI.B, *infra*.

Low income: Goals for Lifeline and Link-Up programs should not be tied to the number of *program* subscribers, but instead to the percentage of low income households that subscribe to telephone service, whether or not they are Lifeline or Link-Up program participants. As Verizon has explained in prior comments, the Commission should not expand criterion in ways that would increase the size of the fund without simultaneously producing a statistically significant

⁶ For example, even though the vast majority of rural high cost funding goes to duplicative networks goes to wireless carriers, and that amount has been increasing rapidly in recent years, *see* footnote , *infra*, Commission data indicate that in rural areas, there already exists significant competition in wireless services. *See Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, 19 FCC Rcd 20597, ¶¶ 107-110 (2004) (reporting, for example, that ninety-seven percent of the U.S. population live in counties with access to three or more different wireless providers, and that counties with populations of less than 100 persons per square mile have access to an average of 3.7 wireless providers).

⁷ In 2000, \$1 million in high-cost subsidies were spent on funding of duplicative ETCs in high-cost areas; by 2002 that figure grew to \$46 million, and in 2004 the figure had reached \$333 million. *Trends in Telephone Service*, Table 19.5 (rel. June 21, 2005) *available at* www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State-Link/IAD/trend605.pdf. In less than five years, the share of high-cost funds spent to subsidize duplicative networks in high-cost areas skyrocketed from 0.1 percent to 9.5 percent. *Id.* It is projected to account for 12.5% of 2005 high cost funding. *See* Progress & Freedom Foundation Report, at 10 & n.39 (*citing* Universal Service Administrative Company, Distribution of High Cost Support Between CETC & ILEC Through 1Q2005).

increase in subscribership.⁸ Particularly because increases in the universal service fund are borne by all telecommunications consumers – including those low income consumers that do not receive Lifeline and Link-Up support – the Commission should not spend program dollars on initiatives that “may only have a minimal impact on national telephone penetration rates.”⁹

Rural health care: Again, it would be wrong to measure the success of the program based on the amount of money spent.¹⁰ In particular, the Commission should not attempt to increase expenditures merely in order to approach the \$400 million annual funding cap initially set for the program, particularly since that cap was based on inflated estimates and assumptions about rural needs that turned out to be incorrect, and thus was set higher than necessary to meet program goals. *Id.*

II. THE COMMISSION SHOULD DIRECT USAC TO REFORM ITS ADMINISTRATION OF THE CONTRIBUTION MECHANISM

A. USAC And The Bureau Should Be Directed Not To Enforce Provisions of The Form 499 Instructions That Purport To Institute Requirements To Police And Guarantee Universal Service Payments of Reseller Customers

As more than one carrier noted in comments, USAC and the Bureau have adopted changes to the Form 499 revenue reporting requirements that increasingly provide more stringent obligations on carriers.¹¹ The most troubling example is the instructions that purport to require wholesale carriers to act as policemen and guarantors of their resellers’ universal service contributions. These requirements are contrary to the Commission’s stated policy of requiring

⁸ Verizon Comments, WC Docket No. 03-109, at 3-6 (filed Aug. 23, 2004).

⁹ *Lifeline and Link-Up*, 19 FCC Rcd 8302, ¶ 57 (2004).

¹⁰ Verizon Comments, WC Docket No. 02-60, at 2-6 (filed July 1, 2002).

¹¹ *See, e.g.*, IDT Comments, at 6; Business Discount Plan Comments, at 12-13.

resellers to pay their own universal service fees for services ordered from wholesale carriers. In addition, they impose unreasonable burdens on wholesale carriers and disadvantage those who provide services on a wholesale basis. The Commission should direct USAC and the Bureau not to enforce these requirements.

In the *First Universal Service Order*, the Commission adopted a rule requiring that assessments be made on contributors' "end-user" telecommunications revenues.¹² In order to avoid the problem of double assessment, the Commission specifically stated that wholesale carriers would be "relieve[d] . . . from contributing directly to the support mechanisms" based on revenues from services they sold to resellers.¹³ It found that, "basing contributions on end-user revenues eliminates the double-counting problem and the market distortions assessments based on gross revenues create because transactions are only counted once at the end-user level. Although it will relieve wholesale carriers from contributing directly to the support mechanisms, the end-user method does not exclude wholesale revenues from the contribution base of carriers that sell to end users because wholesale charges are built into retail rates." *Id.*

Although the Commission has never changed this policy regarding wholesaler exemptions from universal service contribution, in recent years, the Bureau has made changes to the Form 499 filing instructions imposing more stringent requirements on wholesale carriers' obligations regarding the reporting of resale revenues. The 2000 Form 499 filing instructions stated that a contributor must have procedures in place to ensure that "it reports as revenues from resellers only revenues from entities that reasonably would be expected to contribute to support

¹² See *Federal-State Joint Board on Universal Service*, Order, 12 FCC Rcd 8776, ¶ 846 (1997) ("*First Universal Service Order*").

¹³ *First Universal Service Order*, ¶ 846.

universal service.”¹⁴ They also provided that, “if the underlying contributor does not have independent reason to know that the entity will, in fact, resell service and contribute to the federal universal service support mechanisms, then the underlying carrier should either obtain a signed statement to that effect or report those revenues as end user revenues.” *Id.*

However, since then, the instructions have been amended – without Commission rulemaking – to impose more and more stringent conditions each year. Currently, the instructions state that carriers must collect a Form 499 filer ID from their resellers; “verify” that “each” reseller will contribute to the universal service fund; and further provide that “filers will be responsible for any additional universal service assessments that result if its customers must be reclassified as end users.”¹⁵

It is wrong to require wholesalers to police their resellers and pay universal service contributions on their behalf. As an initial matter, the Commission properly determined that the reseller, not the wholesaler, should pay the universal service assessment on resale services. It makes economic sense to impose universal service obligations on the carrier with end-user relationship to the customer, because assessing revenues from the resale value of services that

¹⁴ See *1998 Biennial Regulatory Review*, 14 FCC Rcd 16602, Appendix D, Instructions to Lines 203 to 232 (1999).

¹⁵ Specifically, the Form 499-A Instructions state:

The filer should verify that each reseller will: 1) resell the filer’s services in the form of telecommunications [and not as information services]; and 2) contribute directly to the federal universal service support mechanisms. If the filer does not have independent reason to know that the reseller satisfies these criteria, it should obtain a signed statement certifying that these criteria are met. . . . Filers will be responsible for any additional universal service assessments that result if its customers must be reclassified as end users.

Telecommunications Reporting Worksheet, Form 499-A, Instructions at 18 (April 2005) available at www.universalservice.org/_res/forms/fund-administration/499ai.pdf.

wholesalers charge their reseller customers would lead to a lower contribution than using the retail (end-user) revenues that the resellers charge their end-user customers.

Because the reseller has an obligation to contribute to the universal service fund, the Commission should direct USAC or the Bureau to pursue the resellers directly for payment of appropriate universal service fees. Requiring the wholesaler to essentially audit its own resellers and pay universal service fees on their behalf puts a significant and unfair burden on these carriers, especially for carriers such as Verizon that provide service to literally thousands of carrier customers. Putting wholesale carriers at such a disadvantage to their pure retail counterparts discourages the providing of wholesale services, or makes them far more costly to administer. To the extent that wholesalers are required to pay universal service assessment not only on their own end-user interstate telecommunications revenues, but have the obligation to make up the shortfall from their reseller contributions as well, the policy also runs afoul of the the statutory requirement that universal contributors be assessed on “an equitable and non-discriminatory” basis. *See* 47 U.S.C. § 254(d).

B. USAC Should Be Able To Calculate The Contribution Factor In A More Timely Manner, Without Making The Entire Industry Change Filing Practices

As Verizon and others pointed out, the Commission’s current practice of making the contribution factor available approximately two weeks before the beginning of the each quarter does not give carriers adequate notice to adjust billing or tariffs. For providers such as Verizon that have tariffs, a late release of the contribution factor often causes them to have difficulty meeting the deadlines established by Congress and the Commission to achieve “deemed lawful” status, which requires that the tariffs be filed on 15 days’ notice if the rates will increase.¹⁶

¹⁶ *See* Verizon Comments, at 26-27; 47 U.S.C. § 204(a)(3).

Others, such as wireless carriers, have stated that they have “no opportunity to give customers advance notice of the change in rate (such as in the billing statement for the month before the change is effective), and must change the language on its billing statements in less than 14 days’ time.” Dobson Cellular Comments, at 8.

In response to this problem, USAC has proposed that if the Commission were to require USAC to submit data 14 days earlier (thereby allowing the Commission to release the public notice announcing the factor 14 days earlier), it should first (1) require all carriers to submit Form 499-Qs electronically; or (2) require all filers to get their data to USAC 14 days earlier. USAC Comments, at 67. However, USAC should be able to provide the necessary supporting data to the Commission earlier without inconveniencing the entire industry with different filing requirements.

The suggestion that carriers report their data to USAC two weeks earlier is completely unworkable. Carriers must wait for the accounting books to close, gather and review all relevant data, and populate several data fields on the Form 499 reporting worksheet; under the current reporting schedule, the time already is tight. It is unclear whether carriers would even be able to get the data to USAC two weeks earlier than the current schedule; because they must wait for the closing of the accounting books, they would have to scramble in order to gather and report the data within an extremely compressed time frame, which would only increase the possibility of introducing errors into the process.¹⁷ USAC, by contrast, apparently spends 30 days simply adding up the revenue numbers given to it by the rest of the industry, and offers no explanation as to why it could not tally these amounts in 16 days, rather than 30. *See* USAC Comments, at 65, 67.

¹⁷ Under USAC’s proposal, rather than having about two weeks to turn around the data, Verizon estimates it would have at most a day or two.

USAC alternatively suggests that the Commission mandate electronic reporting of contribution data, in order to facilitate USAC's review. USAC Comments, at 67. As an initial matter, if USAC wants more carriers to file electronically, rather than mandating an electronic filing system, it should work to make the electronic filing more convenient. Unlike ARMIS reports and high cost fund reports, there is no mechanism for allowing carriers to file a mass upload of data. Thus, it would take more time for Verizon to report electronically than a paper filing takes, because Verizon would be forced to manually enter each data point into USAC's electronic database. Not only is this slow, but it increases the chance for human error. USAC should be directed to revise its tools to allow carriers to mass upload contribution data. Until mass uploading capability exists, rather than requiring carriers to file their entire Form 499 reporting worksheets electronically, USAC could give them the option of filing electronically the one or two numbers on the reporting worksheet that would impact USAC's contribution calculations.¹⁸

C. The Administrative Burdens Associated With A Telephone-Number-Based Assessment Mechanism Are No Greater Than Those Faced By The Current Revenue-Based System

TracFone raises a number of objections to a telephone number-based system of assessment.¹⁹ Of course, the Commission is considering what changes to make to the contribution mechanism in another rulemaking proceeding;²⁰ these arguments are most appropriately considered in that proceeding, rather than in the context of a rulemaking focused

¹⁸ Presumably, this would be the worksheet's Line 423, contribution base.

¹⁹ TracFone Comments, at 7-10.

²⁰ See *Federal-State Joint Board on Universal Service*, 17 FCC Rcd 3752, ¶ 1 (2002).

on only administrative changes. However, Verizon will address the comments that suggest that the Commission should not adopt a number-based system because of administrative problems.

TracFone raises a number of administrative criticisms of a telephone number-based system of assessment. However, none of them are sufficient to forestall Commission action to move to such a system. For example, the mere fact that there is “no consensus” among commenters about the best way to administer a telephone number-based system cannot be reason for the Commission not to act.²¹ If requiring industry consensus were the standard for Commission action, little would ever get done. Likewise, while the Commission must be mindful of the potential burdens to the industry of any new reporting requirement, *id.*, at 7-8, there is no evidence that this reporting would necessarily be more burdensome than the revenue-based reporting required on the current Form 499 universal service contribution worksheets.

It is correct to state that the Commission, in crafting a numbers-based contribution system will have to be mindful of reducing incentives to “game” the system.²² For example, in order to address the possibility that “it is becoming increasingly possible to offer services without use of NANPA telephone numbers,” *id.*, the Commission should make it clear that contribution will be required not just for current telephone numbers, but also any successor number or similar designation that would allow end-users access to the public switched telephone network. Many of these potential problems can be avoided by the manner in which the Commission structures the rules. For example, one argument is that under a number-based contribution system, business customers may have artificial incentives to increase the use of direct inward dial

²¹ See TracFone Comments, at 7.

²² TracFone Comments, at 8.

(“DID”) services to limit universal service contributions.²³ Presumably, the fear is that businesses would increasingly move toward having only one external “telephone number,” with callers having to use an internal extension number to reach an individual within the business. But this can be addressed by adopting Verizon’s suggestion to allow carriers to spread the contribution fee assessed to their customers equitably among categories of business customers in a manner that is more flexible than one unit of assessment per telephone number. That is, if carriers could choose to recover the fee from business customers based on revenues or the type of service ordered – while still calculating the contribution to be recovered based on working telephone numbers – this would significantly reduce businesses’ incentive to “game” the system.

Moreover, comments focusing on the administrative burdens of a telephone number-based system fail to acknowledge that there are administrative difficulties with any system, including the current revenue-based approach. Increasingly, revenues from services and product bundles cannot be easily categorized as interstate versus intrastate, or as telecommunications service versus information service, so it is difficult for carriers to determine – and USAC to audit – whether they are contributing correctly, or in the same manner as other contributors. A telephone number-based system, by contrast, offers an objective criterion that can be applied in the same manner to all contributors. And it is incorrect to suggest that the same incentives to game the system would not be present in a revenue-based system, because “providers will not decrease revenues in an effort to minimize USF assessments.”²⁴ As the Commission is well aware, because only certain categories of revenues are assessed, there already exist significant

²³ TracFone Comments, at 8.

²⁴ TracFone Comments, at 10.

incentives for contributors to use the confusion about the nature of the services being offered in order to argue that their services are not subject to assessment.²⁵

III. THE COMMISSION SHOULD ADOPT SUGGESTIONS TO GIVE CARRIERS A WARNING AND OPPORTUNITY TO RESPOND BEFORE IMPLEMENTING THE RED LIGHT RULE

Several parties asked the Commission to re-evaluate the “red light” rules that were implemented as part of the Debt Collection Improvement Act of 1996 (“DCIA”), in order to give a warning before the red light is triggered.²⁶ The red light rules are designed to prevent companies from receiving benefits while delinquent in any non-tax debts owed to the Commission, until those debts have been resolved.²⁷ In practice, however, “[t]he rules cause companies to be suspended from critical USF support even when delinquencies in debts are not truly delinquencies, but rather what appear to be delinquencies that have been caused by ministerial errors, such as posting errors by the USF administrator’s bank, recordkeeping errors by the administrator, and software errors.” USTelecom Comments, at 7. For example, Verizon recently received a “red light” notification in error that was explained as an error the USAC staffer made in typing in the wrong Filer ID number.

²⁵ See, e.g., *AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services*, 20 FCC Rcd 4826 (2005).

²⁶ See, e.g., USTelecom Comments, at 7-8; OPASTCO and WTA Comments, at 16-17; National Exchange Carrier Association, Inc. Comments, at 21-22. See also Qwest Comments, at 15 (“Qwest objects to USAC’s practice of immediately offsetting E-Rate disbursements to a service provider by any outstanding contributor invoice that remains unpaid at the end of the 22-day term. Given the very real possibility of error on the part of USAC, Qwest believes that carriers should be given notice and brief opportunity to remedy the situation before USAC offsets E-Rate distributions with outstanding contribution amounts.”).

²⁷ See *Implementation of the Debt Collection Improvement Act of 1996 and Adoption of Rules Governing Applications or Requests for Benefits by Delinquent Debtors*, 19 FCC Rcd 6540, ¶¶ 3-5 (2004).

The Commission should adopt suggestions to implement a 30-day grace period or “yellow light” period before the red light rules take effect. *See* US Telecom Comments, at 8. Such a practice would give companies a warning and opportunity to correct any red light situations before funding or other benefits are withheld.

IV. THE COMMISSION SHOULD REFORM THE HIGH COST MECHANISM IN THE CONTEXT OF OTHER RULEMAKING PROCEEDINGS

Suggestions for wholesale changes to the high cost program, which would change the level of support given to carriers, should not be addressed in this proceeding on administrative issues.²⁸ Rather, they should be addressed in the Commission’s rulemaking proceedings that are considering substantive changes to high cost programs.²⁹

However, it will take time to work through many of the complex issues raised by competing proposals for long-term reform. Action to control the fund size should not wait. There are several immediate steps the Commission can take to address unwarranted growth in the fund while more fundamental reform is under consideration. Specifically, for the rural fund, the Commission should transition rural carriers with more than 100,000 lines in a state to the same basis of high-cost support as non-rural carriers, and freeze per-line support to both rural ILECs and other ETCs.³⁰ For the non-rural fund, the Commission should direct USAC to

²⁸ For example, Dobson Cellular suggests that the Commission consolidate the five existing high cost support mechanisms “into a single program” and provide all support “on an objective measure of cost, such as the forward-looking cost of the most efficient technology to serve a given area.” Dobson Cellular Comments, at 9. Another commenter proposes that non-ILEC carriers should not receive high cost support based on the ILECs’ costs. *See* Comments of the National Telecommunications Cooperative Association, at 7-8.

²⁹ *See* footnote 3, *supra*.

³⁰ *See* Verizon Comments, CC Docket No. 96-45, at 14-19 (filed Sept. 30, 2005).

reinstitute the cap on high cost support.³¹ These changes alone will save hundreds of millions of dollars per year in universal service program costs.

V. THE COMMISSION SHOULD NOT IMPOSE AUDIT REQUIREMENTS THAT ARE NOT AN EFFICIENT USE OF USAC RESOURCES, OR THAT ARE NOT CLOSELY TARGETED TO FERRETING OUT WASTE, FRAUD, AND ABUSE

While commenters generally acknowledge that the audit process is a necessary part of USAC's role, several point out any "widespread, unfocused independent audit requirement" could have the potential to waste both carrier and government resources if it is not designed to capture those instances where there is likely to be waste, fraud, and abuse of universal service funds.³² For example, requiring annual audits of carriers that receive a certain amount of universal service funding, *see* NPRM ¶ 72, or that report a certain amount of revenues, *id.* ¶ 80, is bad policy both because it audits too much³³ – wasting both USAC and carrier resources and money – but also, as others point out, could actually *increase* problems with compliance, as it would alert a whole class of carriers operating at or below the threshold that they are essentially immune from audits. *See* USAC Comments, at 221; Dobson Comments, at 17.

In particular, the Commission should not require annual, independent audits of universal service contributors reporting more than a certain amount of universal service dollars. *See* NPRM, ¶ 80. USAC notes that the proposed threshold set by the commission – requiring independent audits for only those carriers contributing \$100 million or more in a particular fiscal year – would, like other explicit audit thresholds, "create[] improper incentives to underreport or

³¹ *See* Verizon Comments, at 2-6.

³² *See* OPASTCO and WTA Comments, at 3-4; *see also* Council of Great City Schools at 10-12.

³³ As Verizon stated in initial comments, a less frequent audit period – such as every three years – would be more appropriate.

misclassify revenues to remain below the threshold.” USAC Comments, at 221. It would miss the majority of universal service contributors, which are contributing less than the proposed threshold amount. *Id.*, at 221-222. There is no reason to believe that smaller contributors are less likely to be a compliance risk or to make mistakes than larger contributors.³⁴ Moreover, there is no evidence that requiring audits of such contributors would be likely to uncover compliance problems that otherwise would not be identified. As the Commission has noted, the Enforcement Bureau regularly investigates contributor filings. *Id.* It would be a waste of USAC resources to require it to duplicate this effort.

If the Commission were to require independent audits of contributors or program beneficiaries, USAC and others point out that such audits should be funded as an administrative expense of the universal service program.³⁵ Keeping any audits under the funding of the universal service umbrella allows USAC to maintain the quality and integrity of the audit process, and ensure consistency among different auditors. *See* USAC Comments, at 222. In addition, including them as part of the universal service fund administrative budget encourages USAC to use audits only when they are an efficient tool for ensuring program compliance.

VI. E-RATE: THE COMMISSION SHOULD REQUIRE ACTIONS TO STREAMLINE AND EXPEDITE USAC’S REVIEW, BUT SHOULD NOT ELIMINATE PORTIONS OF THE PROCESS THAT ARE ESSENTIAL TO ENSURING PROPER USE OF E-RATE FUNDS

Most commenters focused on the E-Rate program, which is undoubtedly the most complex one USAC administers. Verizon and other parties suggested a number of steps that

³⁴ If anything, the larger universal service contributors, which likely have more administrative resources and scrutiny by independent auditors and analysts, in some ways may be less likely to be a risk. *See* Sprint Nextel Comments, at 15-16.

³⁵ *See* USAC Comments, at 222; IDT Comments, at 11; OPASTCO and WTA Comments, at 8.

could be taken to streamline the E-Rate process, reduce delays in funding, and to provide more information to applicants and service providers to allow them to better comply with program rules.³⁶ The Commission should not, however, eliminate requirements that are key to ensuring program integrity. It also should reject suggestions that would lead to an increase in administrative burdens or delays in funding.

A. The Commission Should Require BEAR Payments To Be Made Directly To The Applicant, But Service Providers Should Be Paid For Discounts They Have Already Provided To The Applicant

Many commenters have suggested that the Commission could eliminate unnecessary delay and burdens in the E-Rate process by disbursing E-Rate payments directly to the applicants.³⁷ It is important to note, however, that payment should continue to be made to the service provider in situations where it provided services at a discount to the applicant. In those cases, the applicant already has received the benefit of E-Rate funding -- through the receipt of discounted services -- and the E-Rate funds are used to repay the service provider for the portion of the bill not already paid by the applicant. Disbursing E-Rate funds to the applicant in that situation would *increase* the delays and burdens of administration (by requiring the applicant to be a middleman for funds that should be flowed through to the service provider), and risks creating situations where the applicant wrongly withholds funds that belong to the provider.

³⁶ See, e.g., Verizon Comments, at 12-25 (except in cases where the service provider has already provided discounted services, the Commission should pay applicants directly, rather than funneling payments through the service provider; it also should direct USAC to, among other things, adopt a streamlined, multi-year application process for priority one services; implement online tools; and give service providers copies of the Form 471 Item 21 attachment, which contains key information about the services approved for funding).

³⁷ See, e.g., E-Rate Service Provider Forum Comments, at 14; Comments of the State E-Rate Coordinators' Alliance, at 36-40; SBC Comments, at 6-8; Comments of West Virginia Department of Education, Office of Technology and Information Systems, at 7.

B. Where E-Rate Funds Have Been Used For Eligible Services, The Commission Should Direct USAC Not To Seek Repayment of Funds Disbursed In Error Unless There Was Intentional Wrongdoing or Major Rule Violations

Several commenters point out that so long as E-Rate funds have been used for eligible services, USAC should be directed *not* to seek repayment of E-Rate funds that have been disbursed in error if there is no evidence of waste, fraud, or abuse of E-Rate funds.³⁸ There is no good policy reason to require an applicant to repay the fund for eligible services it has already ordered and been provided.³⁹

The Commission should reject the suggestion of one commenter that it might be appropriate to suspend the service provider from program participation in instances where it would not be appropriate to suspend the applicant.⁴⁰ If an applicant or service provider engages in significant violations of the rules, it will be subject to repayment obligations and potentially Enforcement Bureau action. Suspending a service provider's participation in the E-Rate program should be a last resort, since barring a service provider from participating would in effect punish all of the applicants ordering services from that provider, even if they were not involved in the actions that led to the suspension.

³⁸ See, e.g., Chicago Public Schools Comments, at 8; Comments of International Society for Technology in Education and the Consortium for School Networking, at 16-18 ("ISTE Comments").

³⁹ Regardless of the method of payment, the applicant is the one that ultimately receives the benefit of the E-Rate funding, through discounted services. If funding is denied or rescinded, the service provider is entitled to seek 100% payment of these services from the applicant.

⁴⁰ See ISTE Comments, at 16-18.

C. The Commission Should Streamline the Process and Work to Reduce Delays, But It Should Not Eliminate Altogether Forms That Are Necessary for Program Integrity

1. The Commission Should Adopt Reasonable Deadlines for Processing and Review of E-Rate Claims

One repeated theme in many parties' comments was that the Commission and USAC must work to dramatically reduce the current delays in funding for E-Rate services.⁴¹ Currently, there are long delays in sending out funding commitment decision letters, which can lead to applicants postponing projects and services until they know funding has been approved;⁴² delays in paying invoices;⁴³ lengthy Program Integrity Assurance (PIA) reviews and audit processes;⁴⁴ and delays processing appeals.⁴⁵ As the Commission recognized, and commenters confirmed, these delays can have a very real impact on applicants and service providers, including delaying

⁴¹ See, e.g., ISTE Comments at 4-5, 19-22.

⁴² See, e.g., eChalk Comments, at 5 (stating that four and a half months into the funding year, 44% of its applicants had not yet received funding commitment decision letters, forcing many of them to delay or postpone projects until the letters are received); ISTE Comments, at 20 ("This year, three months into the program year and four to six weeks from the opening of next year's application window, thousands of applicants still do not know how much E-Rate support they will receive.").

⁴³ See eChalk Comments, at 3-5 (arguing for a goal of paying invoices within 30 days, and pointing to a situation in which USAC waited a year and then denied an invoice, allegedly on erroneous grounds, requiring eChalk to file an appeal that is still pending).

⁴⁴ See American Library Association Comments, at 9 ("significant processing delays have become the norm; it is not at all unusual for applicants to be working on 3 to 4 funding years at the same time because of these delays"); ISTE Comments, at 20 ("[W]e have heard repeated complaints about the Program Integrity Assurance (PIA) and audit processes, both of which not only can drag on for months but also feature repeated, duplicative and, sometimes contradictory requests for paperwork from applicants."); see also Chicago Public Schools Comments at 15; Council of Great City Schools Comments at 13.

⁴⁵ See ISTE Comments, at 21 ("[W]e believe that USAC can and should be able to review, research, and make a final determination of the merits of each appeal within 90 days of receipt."); Sprint Nextel Comments, at 14-15 (similar); see also M-DPS Comments at 17-18; Council of Great City Schools Comments at 13-14; Chicago Public Schools Comments at 11; Hispanic Information and Telecom Comments at 4.

the provision of service. Even USAC admits that it “must find ways to render decisions more quickly.” USAC Comments, at 38.

The Commission should direct USAC to take some of the steps that Verizon and other commenters have recommended to streamline the E-Rate process, which could reduce some of these delays considerably.⁴⁶ In addition, the Commission should accept suggestions to place reasonable timelines on USAC’s processing and review of claims, including the resolution of appeals. For example, it should implement:

- A firm deadline for processing all funding commitment decision letters;⁴⁷
- A requirement for reviewing and resolving service provider invoices within 90 days;⁴⁸
- A 90 day deadline for resolving appeals.⁴⁹

The Commission could allow USAC the flexibility to waive some of these deadlines in extraordinary circumstances. However, the presumption should be that if USAC can demand that E-Rate program applicants and service providers be required to comply with firm deadlines for submitting applications, invoices, and appeals, USAC should be able to do the same.

⁴⁶ See Verizon Comments, at 14-16; *see also* Council of Great City Schools comments at 6-7; Wisconsin Comments at 6-8.

⁴⁷ See ISTE Comments, at 20-21 (proposing an August 15th deadline for completion of processing for all Priority One funding commitment decision letters, and October 15 deadline for completing processing of Priority two letters, and recommending that USAC be required to issue revised commitment decision letters 30 days after final decision on appeal); *see also* On-Tech Comments at 2-3; M-DPS Comments at 7.

⁴⁸ See Qwest Comments, at 19; On-Tech Comments at 2-3.

⁴⁹ See ISTE Comments, at 21 (USAC should resolve most appeals within 90 days of receipt, but be able to waive the deadline for good cause); Qwest Comments, at 19 (Commission should establish a 90-day deadline for appeals, and require USAC to immediately forward the appeal record to the Commission for any appeal not resolved in that time); Sprint Nextel Comments, at 14-15 (USAC and the Commission should be required to resolve appeals within 90 days, petitions for waiver in 120 days, and petitions for reconsideration within 180 days).

2. The Commission Should Eliminate Unnecessary Paperwork, Especially For Multi-Year Priority 1 Services, But It Should Not Eliminate Altogether Requirements, Such As Competitive Bidding Forms and Technology Plans, That Are Helpful In Protecting Against Waste Of Program Funds

Several commenters, including USAC, agreed with the Commission suggestion to adopt a streamlined process for applying for Priority 1 services that are ordered on a multi-year basis.⁵⁰ USAC already has stated that the form for requesting competitive bidding, Form 470, does not have to be filed every year for services that are offered pursuant to a multi-year contract that already was competitively bid.⁵¹ The same exception to the annual competitive bidding Form 470 filing also should be available for non-contracted tariff and month-to-month services. That is, if a customer is ordering priority 1 services from a tariff or on a month-to-month basis, it should not be required to issue a competitive bid for such services every year. The Commission should not eliminate the competitive bidding requirement altogether, however. Although some commenters claim that competitive bidding requirements from state and local governments are sufficient to ensure program integrity,⁵² as USAC noted, certain private entities are not subject to these state and local competitive bidding requirements. *See* USAC Comments, at 125. In addition, USAC reports that while some applicants stated they did not receive a response to a Form 470 posted request for competitive bids, a “number of applicants . . . informed USAC that the FCC Form 470 posting on the USAC website enabled them to hear from service providers they would have not otherwise known were in the potential pool of eligible bidders.” *Id.*

⁵⁰ *See, e.g.,* USAC Comments, at 103-104.

⁵¹ *See* Letter from D. Scott Barash, USAC, to Marlene H. Dortch, FCC, CC Docket No. 02-6, at 42 (filed Oct. 28, 2004); *see also* http://www.sl.universalservice.org/reference/contract_guidance.asp.

⁵² *See, e.g.,* Comments of American Library Association, at 12-13.

The Commission also should not eliminate the requirement that applicants file a technology plan for internal connections and Internet access. The technology plan is not a mere formality, but a vital step in ensuring against waste of E-Rate funds. Technology plan requirements apply only to internal connections and Internet access. Before such services will be approved for E-Rate funding, USAC requires that the plan meet certain criteria “that are core elements of successful school and library technology initiatives.”⁵³ Without such plans in place, there is no assurance that applicants can effectively use the services being ordered. Although such plans should not be eliminated, the Commission can and should direct USAC to restructure the technology plan process in order to minimize delays in the approval process.⁵⁴

D. The Commission Should Not Accept Suggestions that Would Needlessly Increase the Complexity and Delays Associated With the E-Rate Process

Commenters on the E-Rate program are nearly unanimous in their opinion that the program is too complex, and should be streamlined.⁵⁵ Nevertheless, a handful of commenters suggest additional requirements that are not necessary, and that would only add delay and more bureaucracy to the process. The Commission should reject these suggestions.

In particular, the Commission should reject one commenter’s suggestion to require applicants to counter-sign the Service Provider Invoice Form (Form 474), which is the form

⁵³ See Universal Service Administrative Company, Schools & Libraries, Frequently Asked Questions, Step 2: About Technology Planning, *available at* <http://www.universalservice.org/sl/applicants/step02/faq-about-technology-planning.aspx>.

⁵⁴ See Comments of Verizon, CC Docket No. 02-6, at 2-5 (filed July 21, 2003) (proposing a two-step certification process whereby applicants would certify in their competitive bidding process that they have created a technology plan and submitted it for approval to the appropriate entity, and certify that the plan was approved in the Form 486, which is the form that triggers USAC’s payment of discounts).

⁵⁵ See, e.g., Comments of State E-Rate Coordinators Alliance, at 5-8; USAC Comments, at 37-38; Wisconsin Comments at 2; M-DPS Comments, at 7.

service providers must file in order to be paid for services they have already provided at a discount to the applicant.⁵⁶ A counter-signature requirement is not necessary because service providers already must certify that they have provided services before they are entitled to submit invoices for reimbursement. There is no evidence that requiring counter-signatures would do anything other than delay funding to the service provider, and introduce yet another step in an already complicated process. Indeed, the additional burdens on service providers and on USAC from imposing such a requirement could be significant. Currently, Verizon's invoices to USAC may contain information on services provided to potentially hundreds of applicants. The only way Verizon could have applicants sign off on their own invoices would be if it were to submit individual invoices for every E-Rate customer, which would greatly increase its administrative expenses and the amount of paperwork USAC must process.

Moreover, this would almost certainly create significant funding delays. Because the Service Provider Invoice Form is filed only after the applicant has received its services (at a discount), the applicant would have little or no incentive to counter-sign or file additional forms merely to ensure that the service provider is paid. If there has been a change in personnel at the school or library since the services were initially ordered or provided – which is often the case – it may take significant time just to find the right person who would be able to counter-sign.

E. Before Denying E-Rate Funding For Services That Have Already Been Approved and Provided, USAC Should Be Required to Allow the Service Provider An Opportunity to Address Issues That Have Not Been Resolved With the Applicant

Several commenters described situations in which, after funding applications were approved and services were provided, USAC later denied payment for those services. As one commenter noted, there are “many applications that were initially accepted only to have the

⁵⁶ See Chicago Public Schools Comments, at 30.

decision reversed later.”⁵⁷ In many cases, USAC’s denial of funding is made without ever allowing the service provider to address the situation. For example, eChalk claims that after waiting more than a year for its invoice to be paid, and despite the fact that eChalk had contacted USAC several times to obtain status of the claim, it was given no prior notification before USAC adjusted the commitment level from \$200,000 to \$0 based on erroneous information that eChalk could have corrected if it had been contacted before.⁵⁸ Other commenters provide similar examples.⁵⁹ In these situations, the services likely were already provided, and the only recourse available to the applicant or service provider is an “incredibly lengthy appeals process.”⁶⁰

The Commission should direct USAC to devote more resources to initial processing of applications, to catch any errors – and allow applicants and service providers opportunity to correct them, or notice that they will not receive funding – before services are provided. Applicants should never face a situation where they purchase services based on a USAC representation that they are eligible for funding, and then have funding denied after the services have already been ordered and provided simply because a subsequent reviewer disagrees with the initial determination of eligibility. At a minimum, before an invoice is denied as ineligible after it previously had been approved for funding, the USAC staffer that is considering denial should be required to first consult with the USAC staffer that had initially approved the funding commitment so they can reach a consistent understanding of how such services should be treated

⁵⁷ Chicago Public Schools Comments, at 11.

⁵⁸ See eChalk Comments, at 3-4. According to eChalk, an appeal of that denial currently is pending. *Id.*

⁵⁹ See Council of Great City Schools Comments at 8; E-Rate Service Provider Comments at 3-4.

⁶⁰ Chicago Public Schools Comments, at 11.

in the future.⁶¹ Particularly because the appeals process can take so long, USAC also should be required to allow service providers an opportunity to weigh in before it denies funding. If the service provider is allowed to weigh in before a denial of funding occurs, and can clarify information, or provide additional documentation or data that the applicant did not have, this ultimately would save resources of USAC, the Commission, and the parties, by eliminating unnecessary appeals.

The Commission should not, however, accept suggestions that service providers be *required* to respond to review of applicants. Large carriers, such as Verizon, may have thousands of E-Rate customers; these customers know that they can contact the service provider if they need help responding to a USAC inquiry. If USAC and the applicant are able to resolve the issue without the service provider's involvement, there is no reason to require duplicative efforts on the service provider's part to provide data to USAC that the applicant may have readily at hand.

VII. THE COMMISSION SHOULD NOT REQUIRE ALL CARRIERS TO ADOPT THE SAME MEASURES FOR ENSURING AGAINST LIFELINE PROGRAM ABUSE

The Commission should reject TracFone's suggestion to adopt the particular procedures it is using for the entire industry.⁶² Whether or not the procedures it suggests are adequate to ensure against program abuse is something the Commission should consider in the context of

⁶¹ Consistency would help both staffers' subsequent review, because it would either prevent ineligible services from being approved for funding at the initial commitment decision, or would ensure that invoices for services that were properly approved in the first instance are later paid.

⁶² TracFone states that it will create a database with customer information that it will search every time it gets a new application for enrollment.

reviewing its Compliance Plan and its pending petitions for ETC status.⁶³ Regardless, even if they are reasonable measures for one company to employ, that does not mean they should be mandated for the rest of the industry. Unless the Commission were to put out these proposed processes for notice and comment, it is difficult to know how the proposals could impact the industry. However, in Verizon's experience, every provider has different systems and processes in place, and even changes in requirements and rules that appear to be minor can be very burdensome or even impossible to implement.⁶⁴ Systems that TracFone is able to create from scratch, and implement before it enrolls its first Lifeline customer, may not be appropriate for carriers such as Verizon that have more than a million Lifeline subscribers scattered across approximately two dozen states. In many cases, the systems carriers have in place for enrolling customers have been developed or modified to comply with state requirements, particularly in states with automatic enrollment. The Commission should not mandate particular processes, but should continue to allow providers to develop their own systems for compliance.

VIII. THE COMMISSION SHOULD DIRECT USAC TO WORK MORE CLOSELY WITH THE INDUSTRY IN ORDER TO IMPROVE ITS PROCESSES

A. USAC Should Be Required To Make Its Disbursement And Collection Decisions More Transparent

Commenters pointed out that in many instances, USAC makes substantive changes to disbursement or contribution submissions by carriers or program beneficiaries, with little or no explanation as to how those amounts are calculated. For example, one commenter pointed out

⁶³ See *The Wireline Competition Bureau Seeks Comment On Tracfone Wireless's Compliance Plan in Connection With The Forbearance Order*, CC Docket No. 96-45, DA 05-2946 (rel. Nov. 8, 2005).

⁶⁴ For example, when the Commission recently adopted changes to the Form 497, which collects Lifeline and Link-Up data from carriers, without first consulting the industry, the implementation of the new form had to be postponed because carriers could not comply with the new data collection requirements.

that USAC's high cost disbursement statements may contain "a single disbursement dollar figure for an entire state," that may not match the carrier's line count submissions or allocate the dollar figure among study areas within the state.⁶⁵ Similarly, if USAC makes adjustments to billing statements sent to carriers for contribution requirements, presumably to reflect offsets from prior periods, it does not accompany these adjustments with any explanation of how they were derived. *Id.*, at 7.⁶⁶ In the E-Rate context, it is not uncommon for USAC to initially approve services for funding, then, after services are rendered and invoiced, deny payment in whole or in part, with little or no explanation as to the reasons for denial, or the allocation between approved and non-approved services.⁶⁷

Obviously, if carriers and program beneficiaries cannot understand how USAC reached the conclusions or numbers that it did, they cannot successfully review USAC's actions to determine whether any errors were made. The Commission should direct USAC to explain the basis for its calculations in a manner that is transparent to carriers and program recipients. If the amount of disbursement or billing differs from the normal support amount, or is adjusted from what the carrier submitted, USAC should be directed to provide some information as to the reason for the difference and the basis for the adjustment. This actually would save resources

⁶⁵ See Comments of Dobson Cellular, at 6; *see also* USTelecom Comments, at 8 ("When the Fund's administrator makes changes to a recipient's USF support, the administrator should be required to provide supporting detail for the change. Without this detail, recipients of USF support are often unable to determine the basis for the change and to verify the accuracy of the change . . .").

⁶⁶ See *also* IDT Comments, at 3 ("USAC may unilateral[ly] reject timely filed revenue information, and use a USAC-generated estimate of revenue. Sometimes all the contributor sees of this decision, if anything, is an invoice reflecting the estimate. The contributor may have no basis on which to form an appeal, since there is no record of how USAC arrived at its result.").

⁶⁷ See, e.g., Chicago Public Schools Comments at 11; *Appeal of Tuscola Intermediate School District*, CC Docket No. 02-6, at 5 (filed Dec. 8, 2005); *Verizon North Inc. Appeal of Administrator's Decision*, CC Docket No. 02-6, at 2 (filed Nov. 29, 2005).

both of the carrier and USAC, because carriers would not have to contact USAC after the disbursements in order to figure out the reasons for the change.

B. USAC Should Create A Mechanism For Accepting Input From the Industry on Ways to Improve Its Processes

Many of the suggestions to improve USAC's processes are ones that USAC can implement without Commission action.⁶⁸ Unfortunately, there currently exists no mechanism for parties to notify USAC of system-wide problems or changes that would improve program administration. The Commission should direct USAC to implement a mechanism for accepting comments from the industry about ways to improve its processes, and should require USAC to continually review its processes in light of these suggestions.

CONCLUSION

The Commission should take steps to improve the administration of the universal service fund, as set forth above.

Respectfully submitted,

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⁶⁸ See, e.g., Section II.B, *supra* (USAC should modify its electronic filing system to allow for mass uploads of Form 499 contributor worksheet data).